

IN THE HIGH COURT OF TANZANIA

AT SONGEA

ECONOMIC CRIMES JURISDICTION

(MWARA REGISTRY)

ECONOMIC CRIMES CASE NO. 8 OF 1986

THE REPUBLIC

VERSUS

SAIDI s/o SEIFU

J U D G M E N T.

RUBINA, J.

SAIDI SEIFU has been charged with being in unlawful possession of Government Trophies contrary to section 67(1)(2) (b) and 78(1)(a) of the Wildlife Conservation Act No. 12 of 1974 read together with paragraph 16 of the First Schedule of the Economic and Organized Crime Control Act No.13 of 1984. The prosecution is alleging that Saidi Seifu was on the 4th day of July, 1985 at Magazini Village, Songea District found in unlawful possession of eighteen elephant tusks weighing 142½ kgs valued at shs.49,875/=.

Under the memorandum of the matters agreed as not disputed, the accused has accepted that some of the eighteen elephant tusks had been found buried within the backyard of his house at Magazini Village on 4.7.85. The accused also accepted as true that the eighteen elephant tusks produced in court were the ones that had been recovered from his house on that day. He had no licence for possessing or dealing in elephant tusks as was required by law.

ASP Hamisi Haruna (PWL) drew a sketch map (exhibit P.1) of layout of the backyard of the accused house as it was on 4.7.85 following the search by the Anti Poaching Unit. At the backyard of the accused house still evident were two dug holes from which, the accused, Beno Augustino Nyoni the Ward Secretary and Rashidi Mussa, the Ten Cell Leader had confirmed the eighteen tusks had been unearthed on 4th July, 1985. He, ASP Hamisi also testified on the occupation of the accused house, a two bed roomed bangalow. He stated that the accused

had, at the time of the discovery of the eighteen elephant tusks, a guest - a Somali by name called Mohamed Farah. The accused was occupying a room next to the room that his guest Mohamed Farah was occupying. This evidence was supported by that of Benoit Augustino Nyoni PW2, Hamisi Bakari Ponela PW4, Chairman of C.C.M. Branch of Magazini Village and Elias Mshula (PW5) one of the Anti Poaching Unit Officers that had conducted the search at the house of the accused.

At the close of the prosecution evidence the accused elected to remain silent when called upon to defend himself in terms of the Criminal Procedure Act, 1985. In my summing up to the two Lay Members, I pointed out to the members that the duty to prove that Government trophy - i.e. the eighteen elephant tusks - was found in the house of the accused premises lay on the prosecution and that this obligation was only discharged when the prosecution had managed to prove its case beyond reasonable doubt. I did however emphasise the import of s.70(2)(a) of the Wildlife Conservation Act, 1974 on the burden of proof. I further advised the Lay Members that in selecting to remain silent, the accused was exercising his statutory right, except that in accordance with the law the court was entitled to draw adverse inference on the matter. From the way the accused had conducted his cross examination of the witnesses, I drew the attention of the Lay Members to the fact that the accused, while accepting that he used to live in the same house as his guest Mohamed Farah, he nonetheless spent his nights at his shamba some distance away guarding his crops against destruction by wild animals, a story that was confirmed by Hamisi Bakari Ponela (PW4). I drew the attention of the Lay Members to the possibility that the unearthed eighteen elephant tusks could have been buried or hidden by somebody other than the accused at the

backyard of the accused's house without the knowledge of the accused.

The prosecution called five witnesses while the accused when addressed in terms of s.293(1) of the Criminal Procedure Act, 1985 elected to remain silent.

Section 67(1) of the Wildlife Conservation Act, 1974 provides:

"No person shall be in possession of or buy, sell or otherwise deal in any Government trophy."

Section 70(2)(a) of the Wildlife Conservation Act, 1974 shifts, at some stage, the burden of proof from the prosecution to the accused. It states:

"Where in any proceedings for an offence under section 67 it is proved to the satisfaction of the court - that the Government trophy which is the subject matter of the charge was found in any building, premises or ship, or any part of any building, premises or ship occupied by the accused or his dependant, whether or not the accused was physically present when the trophy was found; the court shall presume that such trophy was in the possession of the accused unless the accused satisfies the court to the contrary."

This court finds that the prosecution witnesses have outlined a consistent story and have no reason of telling lies against the accused. They are all mature and responsible people. Except for PW4, the rest have had very little contact with the accused prior to 4.7.85. The court finds them credible witnesses. Those present at the house of the accused on 4.7.85 i.e. Beno Augustino Nyoni (PW2) and Elias Mahuli (PW5) corroborate each other's story on how the search of the

house of the accused had been conducted and what had been recovered and from where and the ~~demeanour~~ of the accused on the day. Taking into consideration the points that the accused does not dispute and considering the evidence of ASP Hamisi Haruna, PW1, Hamisi Dakari Ponela PW4, Elias Mahula PW5 and Beno Augustino Nyoni PW2, the court finds established that exhibit P.1 was a correct reproduction of the scene at the backyard of the accused's house. The court further finds that the eighteen elephant tusks were found buried at the two spots that the were within the fenced backyard of the accused house and that the accused had voluntarily pointed out to the search party on 4.7.85 the spot marked on exhibit P.1 as 'Y'. Accused denial that the spot was not known to him or that it had been outside the enclosure of his ^{is} house without foundation. Elias Mahula, PW5 had been specific on issue that the accused had voluntarily pointed out to them the second spot from which was recovered two elephant tusks. According to him, these two elephant tusks were the biggest out of the lot. This evidence is to some extent supported by Beno Augustino Nyoni PW1. He had testified that from the first hole marked "X" on exhibit P.1 were recovered small sized elephant tusks while from the second hole marked "Y" on the exhibit P.1 were recovered fairly big elephant tusks. There were two bigger tusks than the rest in exhibit P.2 (The elephant tusks).

This court is further satisfied that the accused knew of the existence of the elephant tusks buried at his backyard and that he had been a participant in the exercise of hiding them in that manner. The court rejects the implied rejection by the accused of the prosecution case that the elephant tusks had been buried at the accused house backyard without the accused's knowledge and participation for the following reasons: that even accepting the accused's contention that the eighteen elephant tusks had been buried by a person other than himself during his absence, the fresh soil from the dug holes should have drawn his attention. Going by the evidence of both PW2 and PW5 the place from which was recovered the first lot of the buried elephant tusks was easily detected as hiding something by trusting a bayonet into the ground. The place

also appeared to have been marked by gourds. Added to this, the accused was the person who had pointed out the second spot from which were recovered some elephant tusks. He could not have known the existence of the elephant tusks in the second hole without his having known the existence of the same in the first hole. What is more, he was by the evidence of Elias Mahula firm that there were no more elephant tusks to be recovered from his backyard. The court further finds that the accused had been occupying the house from whose backyard were found the tusks. In terms of s.66 of the Wildlife Conservation Act, 1974, the eighteen elephant tusks are Government trophies. In the light of all the evidence before it, this court is satisfied that the accused was in possession of Government trophies and that that possession was illegal. The prosecution need not lead evidence to establish that the eighteen elephant tusks belonged to or were owned by the accused. Ownership of the tusks is here irrelevant. All that is required of the prosecution is to establish illegal possession of the tusks. This court finds the prosecution has sufficiently established this to the level required of it in accordance with the standard of proof required in such cases. The eighteen elephant tusks were found buried with either his knowledge participation or both at his house backyard. The accused as pointed out above had elected to remain silent; he had nothing to state in his defence. This court finds the accused guilty as charged and is accordingly convicted.

We would like in conclusion to point out that the police had not investigated this case with the speed that the people have every right to expect from such an institution. The offence the accused was being investigated against was a serious one and prevalent. Its harm to the Republic needs no elaboration. Yet from the time the Police attention of the discovery of the eighteen elephant tusks at the backyard of the accused house was drawn on 6.7.85, the Police found it fit to visit the scene of crime on 22.10.85 over three and half months later! The excuse given that there had been no transport to take them to the scene is not, in the finding of this court, good enough

excuse. Here diligence is called for in the fight against crime. We found this lacking in this case and something drastic and urgent needs to be taken. It would have been in the interests of both the Republic and the accused had the investigation of the case been finalised that much earlier than it had taken leading to the saving the accused of a lot of anxiety that much faster, the Republic being assured that much earlier of the effectiveness of the workings of its forces of law and order, not to mention the consequent but very important positive effects on the reduction of over crowding in remand prisons etc.


Yahya Rubama

Judge

6.7.87

Thomas Mshamu

Lay Member

6.7.87

Vincent Awasi

Lay Member

6.7.87

Coram: RUBAMA, J.

the two lay members.

Mr. Sengwaji Senior State Attorney for the Republic

Accused: present

Judgment delivered.


Yahya Rubama

Judge

6.7.87

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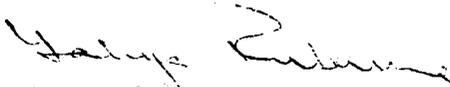
Mr. Sangwaji:

We have no previous record of the accused. However I invite the court to consider the proviso in s.59 of Act. 13 of 1984. I particularly invite the court to consider sub-section 3 of the Act. That is all..

Accused: I have eight children, a very old father, a dead mother. To take care of the children in my absence is not easy. I ask for leniency.

S E N T E N C E

This court finds it not necessary to elaborate on the issue of the seriousness and prevalence of the offence that the accused stands convicted of. In the case under consideration, the court finds that the value of the Government trophies not that much important in the determination of the sentence. It is evident that relatively few elephant tusks had been recovered because that was what had been obtained at the time. The accused had not set to obtain only 18 tusks. He would have wanted a bigger number. What is more, there exists in the tusks many very small tusks; the wanton destruction of the wildlife knew no age limits. I see no mitigating factors in favour of the accused. I sentence the accused to 15 years imprisonment.


Yahya Rubama

Judge

6.7.87

Right of Appeal explained to the accused.


Yahya Rubama

Judge

6.7.87

Order: The 18 elephant tusks are hereby ordered confiscated by the Government.


Yahya Rubama

Judge

6.7.87