

**IN THE HIGH COURT OF TANZANIA
AT IRINGA**

DC CRIMINAL APPEAL NO. 4/2007

**(ORIGINAL CRIMINAL CASE NO. 136 OF 2005 OF THE
DISTRICT COURT OF NJOMBE DISTRICT AT NJOMBE)**

MENARD MKWAMA @ KIPARA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

WEREMA, J.

The appellant, Menard Mkwama @ Kipara was arraigned in the District Court of Njombe with the offence of being in possession of a Government trophy c/s 70 (1) (2) of the Wildlife Conservation Act, Cap. 283. He was convicted and sentenced to an imprisonment terms of 20 years with corporal punishment.

The facts of the case are that on 20/8/2004, the house of the appellant which is shared with a tenant was searched and one elephant tusk was found in there. The appellant and the

tenant were arrested. The tenant was discharged. According to the evidence of PW.1, on p. 3 of the proceedings he stated that the tusk belonged to Yoram Kyando. However, the record does not show a useful meaning. It was not make an intelligent meaning.

The appellant has come to this court with 6 grounds of appeal. Ms Angela Kileo, Learned State Attorney did not support the conviction and sentence. The two grounds advanced by the Learned State Attorney are that:

- (a) There was no evidence on record to contradict the appellant's testimony that the tusk was found on the ceiling of a room that was being used by Yoram Kyando;
- (b) That the prosecution did not call the tenant to testify to clean the air.

It is correct and I support the Learned State Attorney that the prosecution did not prove a case against the appellant beyond reasonable doubt. It will be dangerous to sustain this conviction and sentence thereby on insufficient evidence with so many doubts.

I therefore quash the conviction of the Appellant set aside the sentence imposed by the court and order the immediate release of the appellant from jail unless he is kept there for a lawful cause.



F. M. Werema
F. M. Werema

JUDGE

27.4.2007

Date : 27.4.2007.
Coram : F. M. Werema, J.
For Appellant : Present in person.
For Respondents : Ms. Kileo, SA, Salha & Shawana, SAT.
C/C : Mr. Charles.

This Judgment is read in Court in the presence of the parties and the Court Clerk.



F. M. Werema
Frederick M. Werema

JUDGE

27/4/2007