

**THE UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT ARUSHA**  
**ECONOMIC CASE NO. 6 OF 2019**  
**REPUBLIC**  
***VERSUS***  
**HAMIS JUMA @ SELEMAN @ ISAYA**

**JUDGMENT**

Hamis Juma @ Seleman @ Isaya the accused person herein, is indicated for unlawful possession of government trophy contrary to section 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 as amended by sections 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016. In the particulars of offence, Hamis Juma @ Seleman @ Isaya is accused that on 17.6.2017 at Kilima Mawe in Ngososi Area within Lake Manyara National Park in Monduli District and Arusha region, was found in unlawful possession of government trophies to wit one head and two limbs of giraffe which

is equivalent to one killed giraffe valued USD 15,000, equivalent to Tsh 33,626,250/=. The accused denied a charge.

The summary of evidence presented by prosecution witnesses, as hereunder:

On 17.6.2017 at evening, while on patrol at Ngososi area, PW2 and PW3 wildlife officer or park ranger at Anti-Poaching Unit Northern Zone, saw four people riding bicycle a distance of 450 or 500 meters away, as put by PW3. The four people were identified by their names: Hamis Juma Seleman Isaya (accused herein), Ague, Nassoro, Kaero Nohe (at large). They suspected them and decided to pursue them. They followed and approached them, where PW2 ordered them to stop, they did not heed to a call, instead they abandoned bicycles and run away, two of them run towards a direction they were coming from and the other including the accused herein run by crossing the road. PW2 and PW3 chased on foot those who crossed the road, where the accused was entrapped on shrub thorn bush and thereby was apprehended. The accused was taken at a destination where they had abandoned bicycles, where they saw three bicycles had carried bundles or parcels, upon search the accused's bicycle had carried a head of giraffe, two bicycles had carried legs of giraffe and one bicycle had nothing. The four bicycles (exhibit P3 collectively) and a giraffe meat being

one head and two legs each contained in separate sulfate bag were seized via a certificate of seizure (exhibit P4) and taken to Anti-Poaching Unit offices at Arusha where PW2 handed over to the exhibit keeper one James Kugusa (PW1) via a handing over certificate exhibit P1. PW1 refrigerated a head and two legs of giraffe meat and kept the four bicycles. On 19.6.2017 PW1 handed over one head and two legs of giraffe to Solomon Jeremiah (PW4) via a handing over certificate for exhibit or trophy, exhibit P2. PW4 conducted valuation in respect of a meat of the giraffe being one head and two legs by equating to a value of a giraffe which is USD 15,000/=, equivalent to Tsh 33,626,250/= as on 19.6.2017 Bank of Tanzania exchange rates, as per a trophy valuation certificate exhibit P5. Thereafter PW4 filled an inventory and took an exhibit of giraffe meat (one head and two legs) with an inventory to the Magistrate who made an order for disposal of the said meat, as per an inventory form exhibit P6.

At defence, the accused refuted to have been arrested on 17.6.2019. It was his defence that on 15.6.2017 he was weeding maize on a farm hired somewhere at Ngurumango, where on a way home he saw a motor vehicle make Cruiser, requested for and was given a lift. It was his story that inside that Cruiser there were four people who had put on civilian. Upon arrival to his destination,

those people refused to drop him, instead took him to Mto wa Mbu police post where he gets off the car and proceeded to go, only to be hold back and was detained for ten days. Thereafter he was taken to RMS court where he was arraigned a case pertaining to giraffe which he doesn't know. He denied to have been arrested in possession of a meat of giraffe, neither a bicycle. He denied accusation of hunting giraffe. He defended that a thumb print into exhibit P1 and P4 were appended by force after he was severely beaten at Njiro and KDU, respectively.

In this matter Ms Janeth Sekule learned Senior State Attorney, Felix Kwetukia learned State Attorney and Ms Naomi Mollel learned State Attorney appeared for the republic (prosecutor) and the accused was under representation of Mr. Lyaro Edwin learned Advocate.

Issues for determination: first, whether a meat of giraffe one head and two legs were seized from the accused; secondly whether the chain of custody was properly maintained.

For the first issue, the evidence presented by prosecution was simple and direct evidence. The accused was identified by his name Hamis Juma and was familiar to PW2 and PW3 who are living at the same area at Kigongoni. The defence did not dispute the aforesaid factual aspect. The accused was arrested by PW2 and

PW3 at the scene after his attempt to escape ended in vain after entrapping into shrub thorn bush. It was the evidence of PW2 and PW3 that the accused was seen cycling a bicycle which later was discovered to have carried one head of the giraffe. PW3 was more particular that, before the accused had abandoned a bicycle, he identified the accused to have been riding a bicycle make Avon, had a front light with two reflectors at a rear and yellow handles written Rambo.

In the circumstances a defence by the accused that he was swept into police custody at Mto wa Mbu on 15.6.2017 after he was given a favour of a lift from a farm at Ngurumango, is unmerited. Actually, this sort of defence, looks like the accused was attempting to introduce and rely on somewhat *alibi* line of defence. However, on cross examination by the learned State Attorney, DW1 (accused person), stated that he did not inform the court or the republic that he was not arrested at Ngososi on 17.6.2017 as alleged by prosecution, rather he was arrested at a different destination on the way from Ngurumango and on different date, to wit on 15.6.2017. This alone waters down his *alibi*, for flouting the procedure which requires the accused to furnish a prior notice intimating to rely on such defence. Be as it may, his defence is suspect, for one thing DW1 did not explain as to why he

concentrated on observing attire worn by the four people allegedly gave him a lift, that they had put on civilian, while alleging was innocently seeking for an assistant of lift. Secondly the accused was not specific a particular destination he boarded a lift, neither stated at what destination he asked to alight or descend from a car. Indeed, after he was taken to alleged wrong destination at Mto wa Mbu police post, there was no explanation from the accused as to why he just opted to walk unceremoniously, without saying goodbye for kindness or favour of a lift or else asking them why they took him to a wrong or unintended destination? These facts make his *alibi* wanting.

More important, the accused explanation and allegation seemingly he was suggesting that he was hijacked on 15.6.2017 remanded in custody at Mto wa Mbu police station, then taken to the so called RMs court after ten days. But counting from 15<sup>th</sup> June, the alleged ten days ended on 25<sup>th</sup> June. However lower court records for committal proceedings in respect of the accused herein, show that the first date of appearance before Arusha Resident Magistrate Court was on 5<sup>th</sup> July 2017, being an extra ten days. This suggest that a defence and explanation by the accused is a concoct story.

The accused had made some inculpatory statement at defence, where he admitted ownership of a signature (thumb print)

appearing into a certificate of seizure exhibit P4 and a handing over certificate exhibit P1, in respect of exhibits of a meat of giraffe one head and two legs including four bicycles. The contents of exhibit P4 show that an exhibit of giraffe meat being one head and two legs were seized from the accused. As such, an argument by the accused that he was severely beaten and forced to append signature therein, is unsupportable. Indeed, his explanation were confusing, as on the first place he put that after he was taken without will to a wrong destination at Mto wa Mbu Police Post, he stayed for ten days then he was taken to RMs court. Later changed a story that exhibit P1 he signed at Njiro where he stayed for two days and exhibit P4 he signed at KDU. This suggest that the accused was lying on obvious facts, which make his defence untrustworthy of believe. After all, a question pertaining to beating and forced to sign exhibit P1 and P4 were not asked on cross examination to authors, to wit PW1 and PW2, respectively. It suffices to say that the evidence presented by PW2 and PW3 was watertight that the accused was seen carried a meat of giraffe at Ngososi area within Lake Manyara Park. The accused's defence did not cast any shadow of doubt to this fact.

Therefore, the first issue is ruled in affirmative.

The second proposition, whether the chain of custody was properly maintained. It is in record that after seizure, the four bicycles (exhibit P3 collectively) and a giraffe meat one head and two legs were taken to Anti-Poaching Unit offices at Arusha, where PW2 handed over to the exhibit keeper one James Kugusa (PW1) via a handing over certificate exhibit P1. PW1 refrigerated a head and two legs of giraffe and preserved the four bicycles. On 19.6.2017 PW1 handed over one head and two legs of giraffe to Solomon Jeremiah (PW4) via a handing over certificate for exhibit or trophy, exhibit P2. PW4 conducted valuation in respect of a meat of giraffe being one head and two legs. Thereafter PW4 filled an inventory and took an exhibit of giraffe meat (one head and two legs) with an inventory to the Magistrate, the latter made an order for disposal of the said meat. PW4 tendered in court an inventory form for disposal of exhibit of giraffe meat, exhibit P6. PW1 tendered in court the four bicycles exhibit P3 collectively.

It can be said therefore that, the prosecution had managed to establish a chronological event on sequence of custody in respect of giraffe meat via an inventory for disposal of exhibit, exhibit P6, including the four bicycles exhibit P3 collectively. Indeed, there was no query from the defence regarding a breakage of chain of custody.



Finally, whether the act committed by the accused person amounted to unlawful possession of government trophy. According to penal provision to wit section 86(1) of the Wildlife Conservation Act, No. 5 of 2009, provide that a person shall not be in possession of or otherwise deal in any government trophy. All prosecution witnesses who are wildlife officer or game warden testified that a head found in possession of the accused belonged to a giraffe, and the two legs were rear legs of a giraffe (as put by PW1 and PW3). That conclusion was inferred on the basis that a meat was not peeled off skin. Of interest is the evidence of PW3 who was more elaborate that a meat in question belonged to a giraffe aged average age of more than nine years because of it is drawings which were looking like changing into black colour. PW4 was more specific that it was a female giraffe because had two horns unlike a male giraffe which had two front horns and a minor horn. This testimony in a form of opinion did not receive a backlash from the defence. Therefore, a head and two limbs seized from the accused and his colleague at large, belong to a giraffe.

Unexpectedly, there is a lacuna in law, in a sense that giraffe is not mentioned anywhere in the provision of the parent legislation Act No. 5 of 2009 including it is Schedule are silent. It appears also that there is no Government Gazette or Order made by the Minister

responsible for Wildlife to declare a class of animals to be a national game, where presumably the giraffe could feature therein, as per the erstwhile GN No. 265 and 274 of 1974 made under section 15 of the Wildlife Conservation Act No. 12 of 1974 Cap 283 R.E. 2002, which was repealed by Act No 5 of 2009.

However, section 3 of Act No. 5 of 2009 define trophy to mean any animal alive or dead, any horn, ivory, tooth, tursh, borne, claw, hoof, skin, meat, hair, feather, egg or other portion of any animal.

In the same section 3 define animal to mean any kind of vertebrate and invertebrate animal and young and the egg thereof, other than domestic animals.

Again in Part III of the First Schedule to Act No. 5 of 2009, have a sweeping effects, as it covers all other animals not mentioned in the Schedule.

Having premised as above, it can be said that a giraffe being a vertebrate wild animal (not domestic), fall under the ambit of a definition of trophy depicted above.

Nevertheless, I commend for the inclusion of a giraffe which are the national animal and symbolism of the United Republic of Tanzania, for them to enjoy full coverage and protection under the Wildlife Conservation Act No 5 of 2009. Although, one may argue

that, GN No. 265 and 274 of 1974 made under section 15 of the Wildlife Conservation Act No. 12 of 1974 Cap 283 R.E. 2002 (repealed), is taken care and cured by the savings and transitional provision of section 122(3) of Act No. 5 of 2009. But that was a transitional proviso. Indeed, section 25(1) of Act No. 5 of 2009 presupposes the Minister to make an order in the Gazette to declare any animal or class of animal to be a national game.

Now, as much a meat of giraffe being one head and two legs were certified by PW4 at a value of USD 15,000/=, equivalent to Tsh 33,626,250/=, as per a trophy valuation certificate exhibit P5. And so far the accused had no permit for either hunting or possessing a meat of giraffe, as per the testimony of PW2 and PW3.

Therefore, the accused is taken to have been in unlawful possession of government trophy.

Having adumbrated as above, I rule that the prosecution has managed to prove an information laid against the accused.

The accused is convicted for unlawful possession of government trophy contrary to sections 86(1) and (2)(b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 200 R.E. 2002 as

amended by sections 16(a) and 13(b) respectively of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

E.B. Luvanda  
**JUDGE**  
**8/11/2019**

**SENTENCE**

The accused is sentenced to serve a term of twenty years in prison and to pay a fine of Tsh 336,262,500/=



E.B. Luvanda  
**Judge**  
**8.11.2019**