

**THE UNITED REPUBLIC OF TANZANIA**  
**IN THE HIGH COURT OF TANZANIA**  
**CORRUPTION AND ECONOMIC CRIMES DIVISION**  
**AT ARUSHA**

**ECONOMIC CASE NO. 26 OF 2019**

**REPUBLIC**

***VERSUS***

**1. QAMARA LAZARO DAUDI**

**2. ELISHA PHILEMON AMRI**

**JUDGMENT**

Qamara Lazaro Daudi (the first accused) and Elisha Philemon Amri (the second accused) are indicted 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. It is alleged in the particulars of offence, on 10.10.2017 at Kambi ya Faru area within the district and region of Arusha, the first and second accused were jointly and

together found in unlawful possession of government trophies to wit two elephant tusks which is equivalent to one killed elephant valued USD 15,000 which is equivalent to Tsh 33,735,000/= the property of the government of United Republic of Tanzania without a permit from the Director of Wildlife. The accused persons denied an information.

Prosecution witnesses' presented evidence as summarized hereunder:

PW4 Kazi Gamba (protection assistant at Karatu Zone Ngorongoro Conservation Authority) testified that on 9.10.2017 his informant told him that there are people dealing with the business of elephant tusks. He reported to his Zonal Head, who directed him to Karatu Police Post. Meanwhile he secured phone number of those people dealing in elephant tusks, and agreed to meet at Camp David Bar-Karatu at about 17.00 hours, in view of deliberating modality of trading on elephant tusks. Thereafter they meet at Camp David, where the sellers introduced by names: Elisha Philemon and Qamara Lazaro, who asked PW4 a certain amount of money to enable them reach to a destination where they had kept elephant tusks. It was the explanation of PW4 that he gave them Tsh 20,000/= for that purpose and promised to meet at Kambi ya Faru. Thereafter PW4 went to Karatu Police

procured the assistance of police officers including Vendelinus (PW3) and Amani, together with other game warden (three intelligentsia officers), proceeded to Kambi ya Faru where they arrived at 01.15 hours. Upon arrival, they saw two people coming with a motor cycle and a bag a distance of ten metres, where Elisha Philemon was driving and Qamara Lazaro had carried a bag. PW4 alight and proceeded to check whether a bag had contained elephant tusks. In the course of looking those trophy, Vendelinus and Aman alight to assist to effect arrest, where Elisha Philemon (second accused) on seeing police officers run away and they managed to apprehend Qamara Lazaro (first accused). It was the story of PW3 S/Sgt Vendelinus that after arresting the first accused he recorded a certificate of seizure (exhibit P7) in respect of two elephant tusks (exhibit P3) contained in cement bag folded with two sulfate bags (exhibit P5) and a motor cycle registration No. MC 209 BMK (exhibit P4) all seized from the first accused.

After arrest and seizure, PW3 and PW4 took the suspect (first accused), two elephant tusks (exhibit P3) contained in cement bag folded with two sulfate bags (exhibit P5) and a motor cycle registration No. MC 209 BMK (exhibit P4) to Karatu Police Station. PW3 handed over two elephant tusks contained in cement bag folded with two sulfate bags and a motor cycle registration

No. MC 209 BMK to PW1 DC Humphrey (exhibit keeper) via a handing over certificate exhibit P1, it was done on 10.10.2017.

On 11.10.2017 PW1 handed over an exhibit two elephant tusks to PW2 Linus Gemba Tiotemu (game warden), via handing over certificate exhibit P2. PW2 conducted identification and revealed it was elephant tusks upper incisors with sharp edge, large, elongated, curved upward, at a root there is a large part inside a skull which has streaks with a hole called pulp cavity, at the end of pulp cavity there is no hole rather cemented at the edge which is smooth. PW2 conducted valuation in respect of two tusks resembling appertaining or equal to one elephant, valued USD 15,000 equivalent to Tsh 33,735,000/= as per trophy valuation certificate exhibit P6. Thereafter PW2 handed over back the two elephant tusks to PW1 via handing over certificate exhibit P2. PW1 preserved until when he tendered them in court.

On defence, Qamara Lazaro DW1, stated that on 9.10.2017 while vending charcoal at Camp David, someone asked for 50 sacks of charcoal, where he told him that the same is available at Kansay. They agreed at a price of 40,000/= per each sack, a total of Tsh 4,000,000/=. DW1 proposed that business to be done at night between 00.00 hours and 01.00 hours, as he was smuggling (no permit). At 00.00 hours, that person phoned DW1, where

the former was received by the later at Kambi ya Faru and proceeded at Kansay. They loaded 40 sacks into a pickup, then refused to pay DW1. When DW1 was demanding for his money, that person in corroboration with other six people (five of them had weapons), put DW1 under arrest. They took papers and forced DW1 to sign. He pleaded being illiterate, asked assistance of relative to assist him to read or be taken to village leaders, they refused. That he was arrested because he was demanding for his money, while those people wanted to take 40 sacks of charcoal free of charge. He disowned elephant tusks (exhibit P3) and a motor cycle exhibit P4. That on a fateful day he had a bicycle.

Elisha Philemon DW2 defended that on 9.10.2017 at 07.00 hours he reported at the market Karatu where he was vending fruits and vegetable departed at 18.30 hours for a tea with his colleague Emanuel. Thereafter he proceeded to his home and slept. On 10.10. 2017 at 07.00 hours he was at Karatu market with Emmanuel (DW3), where at 07.30 hours he was arrested by Vendelinus and Kazi Gamba who are police officers. He was taken to Njia Panda at Ngorongoro Conservation Authority, where he severely was beaten, removed clothes, asked to show whereabouts of elephant tusks. Thereafter he was forced to sign papers. That in 2015 he sustained a wound at a left

knee due to motor cycle accident. That he obtained medical treatment at Karatu Lutheran Hospital, Arusha Lutherani Hospital and MOI, as per Exhibit D1 collectively. That he was unable to attend heavy duty, exercise or running. That in 2017 he was still sick, recovering. He refuted allegations of escaping at the scene for the reason that he was at home, sick and unable to run. The story by the second accused (DW2) was supported by Emmanuel Tahan Weso (DW3) working together at the market; Philemon Amri (DW4) second accused's father; Batholomayo Diai Bayo (DW5) chairman at Maliasili street where the second accused is living with his parents.

In this matter Ms. Alice Mtenga learned Senior State Attorney and Ms. Penina Ngotea learned State Attorney appeared for the republic (prosecutor) and the first accused was under representation of Mr. Reginald Lasway learned Advocate and Mr. Samwel Welwel learned Advocate and MR. Noel Siay learned Counsel was advocating for the second accused.

Defence Counsel for second accused and prosecution had filed closing submission which will be considered and referred in the course making findings as the need will arise.

Issue for determination is whether the accused persons were found in unlawful possession of government trophy. Secondly, whether chain of custody was maintained.

The evidence presented by PW4 suggest occurrence of two events or scene on a fateful day, where it is alleged he mate the accused persons to wit Qamara Lazaro and Elisha Philemon: for the first time he mate with them at Camp David Bar-Karatu at about 17.00 hours for preliminary discussion and deliberation on the business of elephant tusks, where PW4 posed as a buyer. It was the explanation of PW4 that the duo asked a certain amount of money to enable them reach to a destination where they had kept elephant tusks, where PW4 gave them Tsh 20,000/= for that purpose and promised to meet at Kambi ya Faru. The second scene was Kambi ya Faru, where the deal ought to be accomplished, instead PW4 deployed a number of police officers and game warden including Vendelinus (PW3) and Amani (police officers), together with other game warden (three intelligentsia officers), proceeded to Kambi ya Faru where they arrived at 01.15 hours. According to PW4 he was the first to meet again with the two accused, where Elisha Philemon was driving and Qamara Lazaro had carried a bag which contained elephant tusks. While PW4 was still browsing those trophies, Vendelinus and Aman

alight to assist to effect arrest, where Elisha Philemon (second accused) on seeing police officers run away and they managed to apprehend Qamara Lazaro (first accused).

According to PW3 S/Sgt Vendelinus, alleged to be familiar to the second accused, whom he identified at a scene.

It is true that PW4 had an opportunity to see the duo accused twice at broad day light and at night where allegedly was assisted by a light illuminating from a car and accused's motor cycle. But one could wonder as to how and a work group of about six police officers aided with weapons and who were fewer paces just ten meters from the accused persons, and who were well prepared to arrest poachers, could really fail to apprehend one person. There were mixed explanation as to why they failed to apprehend him, others saying because of darkness and bush shrub. But when PW3 and PW4 were put to task as to what efforts were made to apprehend him, PW3 seem to suggest that they just let him to go escort free, while PW4 said he attempted to follow in vain. But still one can ask when PW4 was pursuing the second accused, does it mean the first accused was just wondering or he mean he tried to pursue the second accused after his colleague had assisted him to apprehend the first accused. And why did PW3 and others concentrate and



focus to pursue the one who was running instead of just awaiting PW4 to do each and everything? Moreover, the second accused is allegedly to have been arrested on 10.10.2017 at 07.30 hours while at market Karatu town. PW3 and PW4 did not explain a distance between Kambi ya Faru at a scene and Karatu town center where the second accused was arrested. Neither laid a foundation of availability of transport between the two destinations. Neither explained a possibility of one to travel within such a short period from the alleged bush at Kambi ya Faru to town Centre. These unanswered questions coupled by the second accused defence that in the year 2017 was still recovering from a stich wound on a knee of a left leg, which he sustained in a motor cycle accident in 2015, make prosecution evidence against the second accused suspects. DW2 explained that this accident made him fail to attend heavy duty or running. And so far there are no plausible explanation from the prosecution on how the second accused managed to escape six police officers who were deployed there to arrest. I rule that the same create a shadow of doubt on the prosecution evidence.

Be as it may, the evidence adduced by prosecution against the first accused is watertight that he had carried a bag containing elephant tusks and he was apprehended at the scene. Even his defence (DW1) suggest that he was at

Kambi ya Faru between 00.00 hours and 01.00 hours allegedly smuggling charcoal to PW3 and PW4. On cross examination, DW1 also admitted to had meet with PW4 at Camp David on 9.10.2017, which is the same destination and date PW4 allegedly he mate with the first and second accused discussing on the business of elephant tusks. Therefore, a defence by the first accused that he was arrested for a reason of demanding his money for 40 sacks, is a cooked story which cannot exonerate him.

Therefore, the first issue is ruled in affirmative against the first accused alone.

The second proposition, whether the chain of custody was properly maintained. It is in record that after seizure, PW3 and PW4 took the two elephant tusks (exhibit P3) contained in cement bag folded with two sulfate bags (exhibit P5) and a motor cycle registration No. MC 209 BMK (exhibit P4) to Karatu Police Station. PW3 handed over two elephant tusks contained in cement bag folded with two sulfate bags and a motor cycle registration No. MC 209 BMK to PW1 DC Humphrey (exhibit keeper) via a handing over certificate exhibit P1, it was done on 10.10.2017.

On 11.10.2017 PW1 handed over an exhibit two elephant tusks to PW2 Linus Gemba Tiotemu (game warden), via handing over certificate exhibit P2. PW2 conducted identification and valuation in respect of two tusks. Thereafter PW2 handed over back the two elephant tusks to PW1 via handing over certificate exhibit P2. PW1 preserved until when he tendered them in court.

It can be said therefore that, the prosecution had managed to establish a chronological event on sequence of custody in respect of two elephant tusks (exhibit P3) contained in cement bag folded with two sulfate bags (exhibit P5) and a motor cycle registration No. MC 209 BMK (exhibit P4). Indeed, there was no query from the defence regarding a breakage of chain of custody.

Finally, whether the act committed by the first 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. In this matter, PW2 conducted identification and revealed it was elephant tusks upper incisors with sharp edge, large, elongated, curved upward, at a root there is a large part inside a skull which has streaks with a hole called pulp cavity, at the end of pulp cavity there is

no hole rather cemented at the edge which is smooth. PW2 conducted valuation in respect of two tusks resembling appertaining or equal to one elephant, valued USD 15,000 equivalent to Tsh 33,735,000/= as per trophy valuation certificate exhibit P6. This evidence suffice to prove that what was seized from the first accused, are elephant tusks which are government trophy.

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

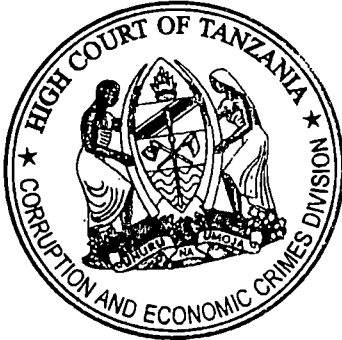
The first accused is convicted for unlawful possession of government trophy contrary to sections 86(1) and (2) (b) of the Wildlife Conservation Act, No. 5 of 2009 read together with paragraph 14 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, Cap 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**  
**6/3/2020**

## SENTENCE

The accused is sentenced to serve either to pay fine Tsh. 337,350,000/= or to a term of twenty years in prison.



**E.B. Luvanda**  
Judge  
6.3.2020

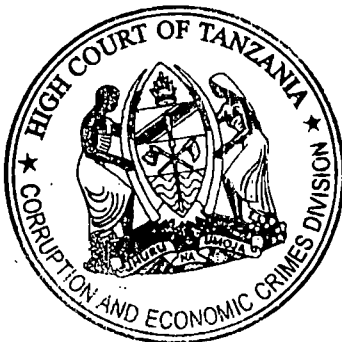
## ORDER

Elephant tusks exhibit P3 and a motor cycle registration No. MC 209 BMK (exhibit P4) are forfeited to the Republic, as no one had claimed ownership in respect of the property.



**E.B. Luvanda**  
Judge  
6.3.2020

**Court:** Right of appeal against conviction, sentence and order for forfeiture is there.



**E.B. Luvanda**  
Judge  
6.3.2020