

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

**ECONOMIC CASE NO. 27 OF 2019**

**REPUBLIC**

***VERSUS***

**1. BENEDICTA D/O DAMIAN @ NEEMA**

**2. DEOGRATIAS S/O ALKADIUS RAHHI @ DEO**

**JUDGMENT**

The accused persons: Benedicta d/o Damiana @ Neema (first accused) and Deogratias s/o Alkadius Rahhi @ Deo (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 7.3.2017 at Khaday area within Mbulu district in Manyara region, the first

accused and second accused were found in unlawful possession of government trophies to wit three elephant tusks equivalent to two killed elephants each valued USD 15,000, all total value USD 30,000 equivalent to Tsh 67,116,600/= the property of the government of the United Republic of Tanzania. The accused persons denied a charge.

Prosecution witnesses' presented evidence as summarized hereunder:

It was a testimony of PW4 that on 7.3.2017 in the evening, he got information from his informant that there were people with elephant tusks looking for a buyer. He reported to the Zonal Head of Anti Poaching Unit (KDU) North Zone at Arusha, who assigned him and Zainabu Rajabu (PW3) to make follow up and apprehend those suspects. That the informant connected him to one person by the name Deogratias who alleged to be in possession of three elephant tusks, sold at a price of 200,000/= per kilogram. At 19.00 hours PW4 and Zainabu Rajabu (PW3) commenced a safari to Mbulu, where they arrived on the same date (7.3.2017) at 22.00 hours, and parked at town center near stand. Thereafter Deogratias (second accused) showed up, where PW4 and PW3 introduced as customers of elephant tusks. Thereafter the second accused went to inform his colleague on arrival of customers. After a while Deogratias phoned a call PW4 informed

him that a business will be done at Khaday. They proceeded at that destination where they met two people on a road (away from habitants, bush shrub on both sides), Deogratias and one lady who after introduction went aside a road and come back with a sulfate bag. It was the evidence of PW4 that a sulfate bag had contained three elephant tusks. Thereafter they put them under arrest, where the lady introduced as Benedicta. This version of a story was supported by PW3, who explained further that, she recorded a certificate of seizure (exhibit P4) in respect of those three elephant tusks one being large and two small one, exhibit P2 collectively. Thereafter they took the suspects and three elephant tusks to KDU Arusha, where PW3 handed over the three elephant tusks to James Kugusa (PW1) via handing over certificate exhibit P1. PW1 measured weight as follows: large tusk had 13.4 kg and the two small one each had 3 kg. PW1 labeled the three elephant tusks it is weight and place of seizure at Mbulu, then preserved in the store. On the same date PW1 handed over an exhibit of three elephant tusks to Gabriel Charles PW2, via handing over certificate exhibit P1 (second part). PW2 conducted identification and revealed it was elephant tusks, as when protrude and make a curve, had a hole at a root which assist or allow steak from elephant tusks to occupy that hole to enhance power of elephant which

assist tusks to be powerful when falling trees. Another feature is shriger lines running from the edge downwards. Thereafter he conducted evaluation in respect of three tusks which were equal to two killed elephants, each valued USD 15,000 making a total of USD 30,000 equivalent to Tsh 67,116,600/= per exchange rate on 8.3.2017, as per trophy valuation certificate exhibit P3. After valuation, PW2 handed over back the three elephant tusks to PW1 via handing over exhibit P1 (third part). PW1 preserved the exhibit of three elephant tusks at the store KDU Arusha until when he tendered them in court.

On defence, Benedicta Damian DW1, stated that on 8.3.2017 at 02.30 hours, people strongly knocked her weak lock of nail, where a door was opened, entered people with torch which was illuminating heavily, took her and pushed into a motor vehicle. That she had only a single piece of khanga covered her chest, she was dragged naked, slapped, where those people were insulting her that she is a chronic poacher. They took her to a certain building where she was forced to sign documents, then taken to Central Police, thereafter charged in court on 17.3.2017. She denied to have been arrested in possession of three elephant tusks.

DW2 Deogratias Alkadius Rahhi, stated that on 7.3.2017 at 21.00 hours he was coming from the bar towards his home at Ayamohe. While at Makonde area, over sudden heard a sound of a car brake near him, two people alight beat him with a club like a cudgel, on explanation that he was among the criminals they were looking for. He was handcuffed, kicked on the chest where gained conscious the following day and found himself at KDU office. That he was interrogated and severely beaten while naked. That he was forced to sign documents. That on the 17<sup>th</sup> he was taken to court. That he is not concerned with this information.

In this matter Ms. Agness Hyera learned Senior State Attorney appeared for the republic (prosecutor) and the first accused was under representation of Mr. Emanuel Shio learned Advocate and Mr. Godluck Michael learned Counsel was for the second accused.

A sole issue for determination is whether the prosecution has managed to prove an information to the required standard.

Essentially the testimony of PW3 and PW4 implicate the first and second accused to have been arrested at the scene at Khaday Mbulu, where the first accused showed up with a three elephant tusks, which PW3 said she dragged

from the shrub bush and were contained into a sulfate bag. This proceeded phone and face to face conversation between the second accused and PW4. According to PW3 after arrest and seizure, she recorded a certificate of seizure exhibit P4. But this exhibit has a lot to be desired. For one thing it materially differ with a seizure certificate which was subject for committal proceedings before the subordinate court. As it was submitted by the defence Counsel, at a committal a document which was mentioned and read to the accused bears three names of the seizing officer to wit Zainab Hussein Rajab, while the one which was tendered bears only two names Zainab Rajab. For another thing, exhibit P4 is stamped with two different rubber stamps one for Anti Poaching Unit Arusha and the second one is for the Head of Anti Poaching Unit Arusha. There was no explanation from PW3 if they went with rubber stamps to the scene. Assuming that was the case, was it possible for them to travel all along to Mbulu at the bush with a rubber stamp of the Head of the Unit? This create doubt if at all this seizure certificate was recorded at the scene Khaday Mbulu. The anomaly in exhibit P4 support a complainant of both DW1 and DW2 who lamented on defence to have been forced to sign the documents at KDU Arusha.

To salvage the situation, PW3 stated that she prepared two certificate of seizure on the explanation that one was for purpose of reserve in case the other got lost. If it is the case, why they did not submit both copies for committal. And why at the trial they opted to tender the one which was not subject to committal proceedings? Indeed there was no explanation if at all the other one is lost.

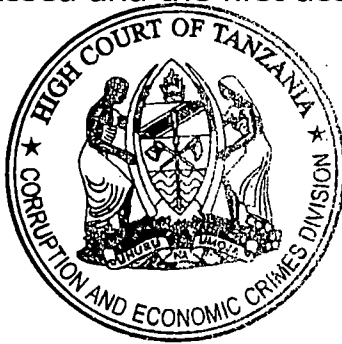
Rule 8(2) of the Economic and Organised Crime Control (the Corruption and Economic Crimes Division) (Procedure) Rules, G.N. 267 of 2016, which is in replica or in pari materia to the provision of section 246(2) of the Criminal Procedure Act, Cap 20 R.E. 2002, provide, I quote,

*'Upon appearance of the accused person before it, the district or a resident Magistrate's court shall read and explain or cause to be read and explained to the accused person or if need be, interpreted in the language understood by him, the Information brought against him as well as the statements or documents containing the substance of the evidence of witnesses whom the Director of Public Prosecution intends to call at the trial'*

None compliance to the above mandatory provision, the document cannot be used in evidence. And so far the circumstances of exhibit P4 raises serious doubt, the same is resolved in favour of the accused persons.

Having said as above, I find that the prosecution evidence wanting.

An information for an offence of unlawful possession of government trophy is dismissed and the first accused and second accused are acquitted.



E.B. Luvanda  
**JUDGE**  
**6/3/2020**